

September 20, 2010

Ms. Elizabeth Lutton Legal Advisor Dallas County Sheriff's Department Frank Crowley Criminal Courts Building 133 Riverfront, LB-31 Dallas, Texas 75207-4313

OR2010-14229

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 396265.

The Dallas County Sheriff's Department (the "department") received a request for personnel information related to a specified deputy, e-mails produced by the deputy during a specified period, and equipment maintenance records of the deputy's vehicle. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.130 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103 provides:

¹In correspondence submitted to this office, you inform us that the requestor has narrowed a portion of his request to include information compiled during a specified period. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). See also City of Dallas v. Abbott, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

. . .

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. The department has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a). To secure the protection of section 552.103(a), the department must demonstrate the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991).

You state the submitted information relates to the prosecution of a traffic citation issued to the requestor by the deputy named in the request. You state the Dallas County District Attorney's Office (the "district attorney") has taken over prosecution of the traffic citation. Thus, the department is not a party to the litigation. However, you have provided our office with a statement from the district attorney stating the information is related to litigation because "it is evidence in this case and/or could be used to impeach [the deputy] as a witness at trial." Accordingly, the department may assert section 552.103 on behalf of the district attorney for the submitted information. Based on the representations of the district attorney and our review of the documents, we agree section 552.103 applies to the submitted information.

We note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <a href="http://www.oag.state.tx.us/open/index\_orl.php">http://www.oag.state.tx.us/open/index\_orl.php</a>, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

Neal Falgoust

Assistant Attorney General Open Records Division

NF/eb

Ref: ID# 396265

Enc. Submitted documents

c: Requestor

(w/o enclosures)